

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

SEP 11 2000

DAVID J. MALAND, CLERK

BY  
DEPUTY

**AETNA HEALTH AND LIFE** §  
**INSURANCE COMPANY, ET AL.** §

**CIVIL ACTION NO. 6:00-CV442-WMS**

**ORIGINAL ANSWER AND COUNTERCLAIM OF SIERRA HEALTH & LIFE  
INSURANCE COMPANY TO DEFENDANTS' THIRD-PARTY PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW**, Sierra Health & Life Insurance Company, Inc. (“Sierra”) and makes and files this, its Answer and Counterclaim to Defendant/Third-Party Plaintiff’s Third-Party Petition and would respectfully show the Court as follows:

## THE PARTIES

1. With respect to the allegations in Paragraph I of the Defendants/Third-Party Plaintiffs' Original Third-Party Petition ("Third-Party Petition"), Sierra admits that its agent's address is correctly listed, but is without sufficient information to admit or deny the remaining allegations of Paragraph I, and therefore denies same.

2. With regard to Paragraph II, Sierra states that Plaintiffs' Original Petition speaks for itself, although Sierra admits that the allegations contained therein are broad and vague. Defendant is without sufficient information or knowledge regarding the remainder of the allegations contained in this paragraph, and therefore denies same.

3. With regard to the allegations in Paragraph III, Sierra is without information to admit or deny that it made medical payments (of an unidentified amount on an unidentified date) to one or more of Third-Party Plaintiffs, or whether it received unidentified refunds for any reason from one or more of Third-Party Plaintiffs, and is further without sufficient information or knowledge to admit or deny the terms of any unidentified agreements, contracts and/or plans applicable to unidentified patients of Third-Party Plaintiffs, but would state that such plans, agreements, or contracts, if any, speak for themselves. Sierra is further without sufficient information or knowledge to admit or deny whether one or more of the unidentified documents at issue, or claims asserted in connection therewith, would be governed by 29 U.S.C. 13102 *et seq.*, commonly known as ERISA. Accordingly, Sierra denies the allegations of Paragraph III.

4. Sierra denies the allegations of Paragraph IV, and denies that Third-Party Plaintiffs are entitled to the relief requested therein.

5. With respect to the allegations of Paragraph V, Sierra is without sufficient information or knowledge to admit or deny the terms of any agreements Third-Party Plaintiffs have with any of the other Health Carriers, and would state that any such agreements or contracts with Sierra, which have not been identified by Third-Party Plaintiffs, speak for themselves. Sierra is further without sufficient information or knowledge to admit or deny whether Third-Party Plaintiffs have complied with such unidentified contracts or agreements, if any. Accordingly, Sierra denies

the allegations in Paragraph V, and further denies that Third-Party Plaintiffs are entitled to any relief whatsoever from Sierra as requested therein.

6. Sierra denies that Third-Party Plaintiffs are entitled to any relief whatsoever from Sierra, including, the relief requested in Paragraph VI.

7. Sierra denies all allegations not specifically admitted herein.

#### **AFFIRMATIVE DEFENSES**

8. Defendant/Third-Party Plaintiffs' Petition fails to state a claim upon which relief can be granted.

9. Plaintiffs' and/or Third-Party Plaintiffs' claims are preempted by ERISA.

10. Plaintiffs' and/or Third-Party Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

11. Plaintiffs' and/or Third-Party Plaintiffs' claims have been satisfied.

12. Defendant/Third-Party Plaintiffs' claims are subject to and/or barred by the terms of any relevant or applicable contract or agreements.

13. Some or all of Plaintiff's and/or Third-Party Plaintiffs' claims are barred by the applicable statutes of limitation.

14. Plaintiffs' DTPA claim fails to state a claim upon which relief can be granted because Plaintiff failed to comply with the notice provisions of that Act.

15. Plaintiffs and Third-Party Plaintiffs lack standing to assert the claims set forth in their respective petitions.

16. Plaintiffs' and Third-Party Plaintiffs' claims are barred by the equitable doctrine of waiver.

17. Plaintiffs' and Third-Party Plaintiffs' claims are barred by the equitable doctrine of laches.

18. Plaintiffs' and Third-Party Plaintiffs' claims are barred by the equitable doctrine of estoppel.

### **COUNTERCLAIM**


19. This counterclaim is asserted against Defendants/Third-Party Plaintiffs, who have already appeared herein.

20. Sierra seeks to recover from and against Defendants/Third-Party Plaintiffs its reasonable and necessary attorney's fees and costs of court expended in defense of this action pursuant to 29 U.S.C. sec. 1132(g) and any other applicable law that entitles Sierra to its fees and costs.

**WHEREFORE, PREMISES CONSIDERED,** Third-Party Defendant Sierra Health & Life Insurance Company, Inc. prays that upon final trial the Court enter judgment that Third-Party Plaintiffs take nothing, dismissing Third-Party Plaintiffs' suit with prejudice, assessing costs against Third-Party Plaintiffs and for such other and further relief to which Third-Party Defendant may be justly entitled.

Respectfully submitted,

**COOPER & SCULLY, P.C.**

By:   
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**ATTORNEYS FOR THIRD-PARTY  
DEFENDANT SIERRA HEALTH & LIFE  
INSURANCE COMPANY, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record via regular mail in accordance with the Federal Rules of Civil Procedure on this 7th day of September, 2000.

  
**ROBERT A. BRAGALONE**